

JOSEPH G. DONAHUE
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October 28, 2003

HAND DELIVERED

Dennis L. Keschl, Administrative Director
Maine Public Utilities Commission
State House Station 18
242 State Street
Augusta, ME 04333-0018

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RE: Community Service Telephone Co. and Northland Telephone Company of Maine, Inc., Sidney, Standish, China and Maine Telephone Companies (FairPoint Companies of New England), Requests for Approval of Reorganizations, Docket No. 2003-475, **Filing of Stipulation**

Dear Dennis:

Please find enclosed an original and six copies of the Stipulation in the above-referenced matter, which has been agreed to by the FairPoint New England Telephone Companies and the Public Advocate. The Stipulation has also been discussed with the Staff.

We request that the Stipulation be placed on the Commission's agenda for deliberations on Monday, November 3, 2003.

Sincerely,



Joseph G. Donahue

Counsel for China Telephone Company,
Maine Telephone Company, Northland
Telephone Company of Maine, Inc.,
Sidney Telephone Company and
Standish Telephone Company
("FairPoint New England Telephone
Companies")

JGD:amp
Enclosures

PRETI FLAHERTY
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cc via email and mail:

Audrey Prior, FairPoint New England
RoJean Tulk, FairPoint New England
Shirley Linn, FairPoint Communications
William Black, Office of the Public Advocate
William Harwood, Verrill & Dana
Stephen Johnson, Verrill & Dana
Mark Blake, Community Service Telephone Co.
James Sanborn, Community Service Telephone Co.

October 28, 2003

COMMUNITY SERVICE TELEPHONE COMPANY
AND NORTHLAND, SIDNEY, STANDISH, CHINA AND MAINE TELEPHONE COMPANIES (FAIRPOINT
COMPANIES OF NEW ENGLAND), REQUESTS FOR
APPROVAL OF REORGANIZATIONS **STIPULATION**

Community Service Telephone Co. ("CST"), Northland Telephone Company of Maine, Inc., Sidney Telephone Company, Standish Telephone Company, China Telephone Company and Maine Telephone Company ("FairPoint New England Telephone Companies") (CST and FairPoint New England Telephone Companies being the "Applicants") and the Office of the Public Advocate ("Public Advocate"), collectively the "Parties," hereby agree and stipulate as follows:

I. PURPOSE

The purpose of this Stipulation is to settle all issues, to avoid the necessity for a hearing and to expedite the Commission's consideration and resolution of this proceeding. The agreements contained herein are made on the basis of the information provided by the Applicants in the Application for Approval, in responses to written and oral requests and in discussions with the Commission's Advisory Staff and Public Advocate.

II. PROCEDURAL HISTORY AND BACKGROUND

A. Procedural History

On July 1, 2003, the Applicants submitted a Joint Application for Approvals, seeking the issuance of a Commission order granting the required approvals of reorganizations of each of the Applicants as described in the Application. The reorganizations relate to the purchase of the stock of CST (and its CLEC affiliate, CommTel Communications, Inc. ("CCI")), by MJD Ventures, Inc. ("MJDV"), a subsidiary of FairPoint Communications, Inc. ("FairPoint"), which is

the ultimate parent of the five FairPoint New England Telephone Companies. The Hearing Examiner issued a Notice of Proceeding; Procedural Order on August 4, 2003, which set August 12, 2003 as the intervention deadline. The Public Advocate filed a Petition to Intervene on July 31, 2003. No other Petitions to Intervene were filed in this case. A copy of the Stock Purchase Agreement among FairPoint Communications, Inc. and Community Service Communications, Inc., Community Service Telephone Co., and Commtel Communications, Inc. was filed with the Commission on July 30, 2003. (The Stock Purchase Agreement was assigned by FairPoint to MJDV on June 26, 2003.)

FairPoint New England and CST jointly proposed a schedule for the processing of this case with the Hearing Examiner on August 8, 2003. The Hearing Examiner issued a schedule on September 11, 2003, which was revised on September 15, 2003. On August 7, 2003, the Hearing Examiner issued Data Request No. 1, to which CST responded on August 27, 2003, and FairPoint responded on August 28, 2003 and September 15, 2003. A Technical Conference was held among the Commission Staff and the Parties on September 25, 2003, during which oral data requests were propounded. CST submitted its responses to oral data requests on September 30, 2003, and FairPoint responded on October 2, 2003. On October 8, 2003, a Settlement Conference was held among the Commission Staff and the Parties, with a follow-up conference call on October 10, 2003. A second settlement conference was held on October 23, 2003.

B. Description of the Transaction

Community Service Communications, Inc. ("CSC") is the parent company of CST, an incumbent local exchange carrier ("ILEC"), and CCI, a provider of competitive telecommunications services in the form of resold and dedicated local exchange service ("CLEC" services) and dedicated interexchange service ("IXC" services). FairPoint is the ultimate parent company of each of the

FairPoint New England Telephone Companies, which are Maine ILECs. MJDV is a wholly-owned subsidiary of FairPoint, which currently owns the stock of Utilities, Inc. (the parent company of Standish Telephone Company, China Telephone Company, and Maine Telephone Company) and Sidney Telephone Company. (The intermediate parent company of Northland Telephone Company of Maine, Inc. is ST Enterprises, Ltd.)

CSC, CST, CCI, and FairPoint (the "Contracting Parties") have entered into a Stock Purchase Agreement, dated as of April 18, 2003, and as amended June 20, 2003 (the "Agreement") which provides for the transfer of all of the capital stock of CST and CCI to FairPoint or an authorized assignee of FairPoint, in this case MJDV.¹ Upon completion of the stock transfers, CST and CCI will be wholly-owned by MJDV, and, therefore, indirect subsidiaries of FairPoint.²

C. Description of the Required Regulatory Approvals

The creation, organization, transfer of ownership or control or termination, *inter alia*, of an affiliated interest accomplished by the acquisition or transfer of voting securities or property constitutes a reorganization which requires approval under 35-A M.R.S.A. §708 (the "Reorganization Statute"). The transfer of ownership and control of CST and CCI from CSC to FairPoint (through its intermediate holding company MJDV), accomplished by the transfer of the stock of CST and CCI, will cause reorganizations which will require the approval of the

¹ At the time the Application was filed with the Commission, the Contracting Parties had entered into an Asset Purchase Agreement, as amended by an Amendment to Asset Purchase Agreement dated June 20, 2003. As provided by the Amendment, the Agreement among the Parties became effectively a Stock Purchase Agreement. A composite Stock Purchase Agreement was then prepared and executed by the Contracting Parties, and a copy was filed with the Commission on July 30, 2003.

² At or immediately prior to the closing on the transfer of the stock, CST and CCI will transfer to CSC (or one or more designated affiliates of CSC) certain assets to be retained by CSC ("Excluded Assets"). Because these Excluded Assets will not be required for the continued operations of CST and CCI, the Excluded Assets will, as a result of the transfer, cease to be necessary or useful in the performance of CST's or CCI's duties to the public, and the transfer of such property will not materially affect the ability of CST and CCI to perform their duties to the public. Therefore, approval of the transfer of the Excluded Assets is not required under 35-A M.R.S.A. §1101.

Commission, as follows: (a) upon consummation of the transfer of stock of CST, FairPoint and all its subsidiaries will become affiliated interests of CST, which will constitute a reorganization of CST which requires the approval of the Commission;³ (b) upon consummation of the transfer of stock of CST and CCI, CST and CCI will become affiliated interests of the FairPoint New England Telephone Companies, constituting reorganizations of the FairPoint New England Telephone Companies which require the approval of the Commission;⁴ and (c) the termination of the affiliated interest relationship between CST and CSC and other subsidiaries of CSC constitute a reorganization for which CST is required to obtain approval.⁵

Unless exempted by the Commission (as is the case with regard to CLECs and IXCs), loans, guaranties and certain transactions between public utilities and their affiliated interests require the prior approval of the Commission under 35-A M.R.S.A. §707. The provision of services and facilities between CST and any of its affiliated interests pursuant to a standard Support Services Agreement (“SSA”) has been approved by the Commission pursuant to its approval of an SSA and related Cost Allocation Manual (“CAM”) for CST in Community Service Telephone Company, Request for Approval of Affiliated Interest Transaction Standard Support Services Agreement, Docket No. 98-972. CST plans that all transactions with its new affiliated interests that are within the scope of the SSA will be conducted in accordance with the SSA and CAM approved in Docket No. 98-972. To the extent that CST proposes to engage in any transactions not covered by the SSA, which require approval under 35-A

³ Although CCI is a public utility and, as such, would be subject to the same approval requirements of the Reorganization Statute as CST, CCI is exempted from the requirements of the Reorganization Statute by the Commission’s Order in Docket No. 2001-791 and by Section 12 of Chapter 280 of the Commission’s Rules. To the extent that notice of the transfer of control of CCI is required under the Order in Docket No. 2001-791 and Section 12, the Application constitutes such notice.

⁴ FairPoint’s competitive subsidiaries are exempt from the approval requirements of Section 708 by virtue of the Orders granting them authority and Section 12 of Chapter 280 of the Commission’s Rules.

⁵ Because CST’s stock is not being acquired by a public utility, approval under 35-A M.R.S.A. §1103 is not required.

M.R.S.A. §707, CST will request approval of the Commission. Therefore, no approvals under 35-A M.R.S.A. §707 are required at this time.

III. APPROVALS AND CONDITIONS

A. Approvals

The Parties agree that the Commission find that the above-described reorganizations are consistent with the interests of the Applicants' ratepayers and investors and that neither ratepayers nor investors are adversely affected by the reorganizations. The Parties recommend that the Commission grant the required approvals under 35-A M.R.S.A. §708 of the reorganizations resulting from the transactions described herein, including the reorganizations listed above, and agree that the Commission's approval of this Stipulation shall constitute the granting of such approvals and shall conclude this proceeding.

B. Conditions

The Parties agree that the above approvals are subject to the following conditions:

1. Subsequent to consummation of the reorganizations, CST will not seek an increase in rates that reflects any increase in the overall revenue requirement of CST (including operating costs, investment and cost of capital) that results from the reorganization. In any proceeding in which CST's revenue requirement or overall rate level is at issue, CST will have the burden of proof to show that an increase in its overall revenue requirement is not a result of the reorganization.

2. If the reorganization is consummated, the Revised Rate Plan filed by CST on August 1, 2003, in Docket No. 2001-827, will be implemented subject to the condition that CST will not be allowed either (a) to increase its rates pursuant to the Revised Rate Plan above the level of the then existing Verizon

rates or (b) to receive support from the State MUSF. The limitations in (a) and (b) will not apply if CST shall have submitted a request to increase its rates above the Verizon level and/or a request to receive MUSF support, which is accompanied by a Chapter 120 filing, and the request is granted by the Commission. If the reorganization is not consummated, sentences one and two of this provision shall be void and the rights of the Public Advocate and CST to take positions and present argument in Docket No. 2001-827 on any issue relevant thereto shall not be affected by this Stipulation.

3 Unless CST has previously filed a Chapter 120 filing after the consummation of the reorganization, CST shall file a Chapter 120 filing no later than May 31, 2006, which is based on a 2005 test year, for review by the Commission and the Public Advocate. This provision shall be void if the reorganization is not consummated.

4. Subsequent to the reorganization, CST may recover acquisition costs that are in excess of CST's net book value immediately prior to the reorganization (the "Acquisition Premium") only subject to the following: Recovery by CST of any portion of the acquisition premium is limited to circumstances where the savings resulting from the reorganization itself (and not from some other source) exceed the costs imposed by the reorganization. Moreover, any such recovery will be subject to the following limitations:

a. the acquisition premium will not be considered in any way where the effect of including the premium in any rate calculations would be to increase rates above levels that would exist absent the reorganization (in other words, there must be demonstrable benefits available to ratepayers to offset all reorganization-related costs);

b. Maine ratepayers receive a reasonable portion of the net savings from the reorganization, as follows:

- i. subject to (ii) below, 50% of any reduction in CST's overall revenue requirement that results from the reorganization shall be passed on to CST's customers;
- ii. CST may recover the Acquisition Premium only to the extent that such recovery is equal to 50% of the reduction in CST's overall revenue requirement described in subsection i. above.
- iii. No portion of the acquisition premium will be included in any rates that become effective 12 years after the consummation of the reorganizations.

5. Upon the Commission's approval of this Stipulation, CST will file monthly written reports with the Commission which contain the service quality information currently being filed by CST on a quarterly basis, and, in addition, the average answering time from the time the receptionist forwards a call to the customer service center to the time the call is answered by a customer service representative, and, when feasible, the average answering time from the time the receptionist forwards a call to the repair center to the time the call is answered by a repair center representative. Within 4 months after the consummation of the reorganization, CST shall submit to the Commission Staff and the Public Advocate a proposed service quality assurance plan, which includes provisions for the reporting of the service quality information delineated above and a penalty or other provision that provides an incentive for CST to adhere to the plan. The proposed plan may contain a proposal that any such incentive provision should only become activated upon certain criteria not being met. If the Staff, Public Advocate and CST fail to agree on the adoption or provisions of a plan, the matter will be referred to the Commission for decision.

6. CST will provide a written notice to the Commission at least 6 months in advance of any and all network changes that result in replacing any switches having stand-alone switching capability and/or changing any network configuration in a manner such that the network is less physically diverse and

less redundant. This notice may be provided in network construction review meetings with Staff, which would be held in July and December of 2004 and in December of 2005-2008, with additional notification if any plans change so as to provide at least the 6 months notice to the Commission.

7. Within six months after the consummation of the reorganizations, the Applicants will provide the Staff and Public Advocate with an analysis of the pros and cons of adopting a new line construction policy for all Applicants, and will discuss in good faith the adoption of a new line construction policy similar to those recently adopted for major electric utilities in Maine.

IV. MISCELLANEOUS PROVISIONS

Waiver of Appeal. The Parties to this Stipulation waive their rights to request reconsideration pursuant to Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R. 110), to appeal pursuant to 35-A M.R.S.A. §1320, or to otherwise seek reconsideration or judicial review of the Commission's Order approving this Stipulation.

Record. The record on which the Commission may base its determination whether to accept and approve this Stipulation shall consist of the Application, all information provided in responses to Staff and Public Advocate requests, and this Stipulation.

Non-Precedential Effect. Except where expressly noted, the Stipulation shall not be considered legal precedent, nor shall it preclude a party from raising any issues in any future proceeding or investigation on similar matters subsequent to this proceeding.

Stipulation as Integral Document. This Stipulation represents the full agreement among all parties to the Stipulation and rejection of any part of this Stipulation constitutes a rejection of the whole.

Staff Presentation of Stipulation. The Parties to this Stipulation hereby waive any rights that they have under 5 M.R.S.A. §9055 and related Commission Rules to the extent necessary to permit the Advisory Staff to discuss this Stipulation and the resolution of this case with the Commission, without the participation of any party, except in the case where a party to this proceeding is opposing this Stipulation, provided that such discussions take place in a public deliberative session.

Signed and Agreed to:

COMMUNITY SERVICE TELEPHONE CO.

By: _____
Its: _____ Date

NORTHLAND TELEPHONE COMPANY OF
MAINE, INC., SIDNEY TELEPHONE
COMPANY, STANDISH TELEPHONE
COMPANY, CHINA TELEPHONE COMPANY,
MAINE TELEPHONE COMPANY

By: Joseph W. Donahue 10-28-03
Their: Attorney Date

OFFICE OF THE PUBLIC ADVOCATE

By: William C. Block 10/29/03
Its: Deputy Date